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April 26, 2013

VIA ECFS

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Notice of Ex Parte Presentation, CG Docket Nos. 13-24 and 03-123

Dear Ms. Dortch:

On April 24, 2013, Claude Stout, Executive Director, Telecommunications for the Deaf and Hard of Hearing, Inc. (“TDI”) and Chair, Deaf and Hard of Hearing Consumer Action Network (“DHHCAN”); Cheryl Heppner, National Advocacy Director, Association of Late Deafened Adults, Inc. (“ALDA”) and Vice-Chair, DHHCAN; Lise Hamlin, Director, Public Policy Advocacy, Hearing Loss Association of America (“HLAA”); Christian Vogler, Co-Principal Investigator, Rehabilitation Engineering Research Center on Telecommunications Access (“RERC-TA”); Linda Kozma-Spytek, Research Audiologist, RERC-TA; Paula Tucker, Research Associate, RERC-TA (together, the “Consumer Groups”) along with Daniel Brooks and the undersigned of Bingham McCutchen LLP on behalf of TDI met with Karen Strauss, Robert Aldrich, Gregory Hlibok, Eliot Greenwald, and Elaine Gardner from the Consumer and Government Affairs Bureau and Andrew Muiltz from the Wireline Competition Bureau to discuss RERC-TA’s survey on Captioned Telephone Service (“CTS”) usage¹ and the FCC’s interim default captioning-off rule.²

¹ See Letter from Christian Vogler Director, Technology Access Program RERC-TA, to Marlene H. Dortch, Secretary, CG Docket Nos. 13-24 and 03-123 (filed Apr. 12, 2013) (attaching RERC-TA’s initial analysis of its survey of CTS use).

² *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 13-24 & 03-123, Order and Notice of Proposed Rulemaking, FCC 13-13, ¶ 33 (2013) (“NPRM”); 47 C.F.R. § 64.604(c)(10).

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The Consumer Groups presented the views set forth in the attached two handouts that were distributed during the meeting.³

As indicated in the attached RERC-TA presentation, a main survey finding is that the survey data does not support either fraud or misuse as the source of recent IP CTS growth. Differences in usage between recent CTS users and long-time CTS users appear to be small, and almost all special captioned telephone users reported that the captions on their telephone are either very important or important to having a successful conversation. These results indicated that the captioned phones used were obtained for valid reasons, and therefore provide little evidence for fraud among the survey respondents. Likewise a low incidence of misuse was found among survey respondents. Only eight percent of the CTS users reported sharing their equipment with hearing household members; and an even smaller percentage (*i.e.*, six percent) reported that hearing household members do not always turn off the captions or do not know how to turn them off.

The Commission should not interpret this latter finding to mean that six percent of all IP CTS minutes are the result of ineligible usage. While the frequency of this behavior is unknown among survey respondents, any misuse is likely *de minimis* and far less than six percent. IP CTS telephones are hard-wired devices and therefore in a fixed location in the home, typically in a place that an eligible IP CTS user can easily access. They would not provide residential hearing consumers with either the convenience or mobility of typically wireless or cordless devices for telephone calls. The results suggest that any misuse is miniscule compared to the enormous benefits enjoyed by those who are legitimately using IP CTS as the functional equivalent to traditional telephone service.

During the meeting, Consumer Groups also explained that, although recent IP CTS growth appears to be exponential rather than linear, the growth curve is consistent with that of an S-curve—a common growth pattern for new technology in which initial adoption is slow, followed by a period of rapid growth that

³ The RERC-TA PowerPoint presentation attached hereto is also available at <http://tap.gallaudet.edu/CTSSurvey/docs/FCCPresentation-April2013.pptx> and the page linking to it is at <http://tap.gallaudet.edu/CTSSurvey/results.asp>. For ease of viewing, a copy of this presentation, which has only one slide per page, is attached hereto as well.

eventually levels off.⁴ Consumer Groups expect that IP CTS growth will follow this S-curve pattern and eventually level off.

In addition, the Consumer Groups explained that the CTS usage survey was conducted online and therefore does not fully reflect the CTS usage of individuals who are older and are known to rely heavily on CTS, but do not otherwise utilize the Internet. Thus, while 90% of the survey respondents stated that captioning is important or very important for having a successful conversation, this figure would likely be higher if individuals who are older were more fully represented in the survey.

Finally, as indicated in the attached handout concerning the default-off rule, the Consumer Groups emphasized that a permanent default captioning rule should not be adopted because feedback from IP CTS consumers indicates that prohibiting “default-on” captioning contravenes the functional equivalence mandate of the ADA, Section 225. Indeed, forcing IP CTS consumers to turn captions on for every call is not functionally equivalent to a hearing user’s ability to pick up a telephone and make a call.

Also discussed was the delay in communication the default captions-off rule has created. In this connection, the Commission should recognize that as to outgoing calls made by an IP CTS user, the remote hearing party may not know who is calling and may hang up before the captioning is enabled. With respect to incoming calls to IP CTS users, the IP CTS user may miss critical content at the beginning of the call or the remote party may hang up as a result of the delayed captioning. The Consumer Groups explained further that, as other commenters in this proceeding have noted,⁵ the default captions-off rule could have dangerous consequences for IP CTS consumers placing 911 calls in emergency situations.

⁴ See Comments of the RERC-TA, CG Docket Nos. 13-24 and 03-123, at 7-9 (filed Feb. 26, 2013); *NPRM*, ¶ 38.

⁵ See, e.g., Comments of Sprint Nextel, CG Docket Nos. 13-24 and 03-123, at 9 n.11 (Feb. 26, 2013).

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Respectfully submitted,

/s/ Philip Macres

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Counsel for TDI

Attachments

cc (by email):

Karen Strauss
Robert Aldrich
Gregory Hlibok
Eliot Greenwald
Elaine Gardner
Andrew Mulitz